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OFFICE OF PETITIONS

In re Application of	:
Carlos Correa	:
Application No. 10/042,695	: CORRECTED
Filed: 29 October, 2001	: DECISION DISMISSING
For: A Computer Monitor Utility	: PETITION
Assembly	:

This is a corrected decision on the petition filed by facsimile on 1 April, 2002, and styled under 37 CFR 1.182 which is treated as a petition under 37 CFR 1.10(e) to accord the above-identified application a filing date of 14 February, 2001.

The petition is dismissed.

Petitioner alleges that a continuation-in-part application of U.S. Application No. 09/504,355 was deposited in a Express Mail package having Label No. **EM**-053-334-408-US on Wednesday, 14 February, 2001, in a designated Express Mail deposit slot at the U.S. Post Office General Mail Facility located at 2200 N.W. 72nd Avenue, Miami, Florida 33152 before the 5:00 PM closing time of the Post Office facility and well before the 9:00 PM time designated on said Mail Box as the final Express Mail pick up time for the day. As proof, petitioners have submitted a true and complete copy of the items (i.e., Certificate of Express Mailing having Express Mail Label No. **EL**-053-334-408-US, Request and Certificate under 35 USC 122(b)(2)(B)(I), transmittal cover sheet, informal drawings (15 pages), patent application (51 pages) and inventorship papers) sent along with a Certificate of Express Mailing on 14 February, 2001. The petitioner alleges that the United States Post Office was contacted to receive a receipt of the Express Mail, but was informed that their computer records only hold information for a 90 day period. The petitioners also allege that they repeatedly contacted the clerk

of the Applications Branch at the USPTO in order to identify the reason for non-receipt of the return post card or the filing receipt, prior to filing this petition.

In support of the allegation that the Express Mail package in question was deposited with the Postal Service on 14 February, 2001, the petition filed 29 October, 2001, includes a declaration signed by Peter A. Matos that he deposited the Express Mail package having Label No. EM-053-334-408-US in a designated Express Mail deposit slot at the U.S. Post Office General Mail Facility located at 2200 N.W. 72nd Avenue, Miami, Florida 33152 before the 5:00 PM closing time of the Post Office facility and well before the 9:00 PM time designated on said Mail Box as the final Express Mail pick up time for the day.

37 CFR § 1.10 provides that questions concerning the date of mailing are resolved by the date of mailing shown on the Express Mail receipt. However, only where it is shown to the satisfaction of the Commissioner that the date indicated on the Express Mail receipt is an error, the Commissioner may waive or suspend the provisions of the rule pursuant to 37 CFR 1.183. In view of all of the evidence present in the file, a conclusion that the application was deposited in Express Mail service with the U.S. Postal Service on 14 February, 2001, cannot be made. The evidence presented has been carefully considered, but is not convincing of petitioners' entitlement to a filing date of 14 February, 2001. Although the declaration by Peter Matos states that the package bore Express Mail No. **EM**-053-334-408-US, the copy of the application papers provided by petitioner bear Express Mail No. **EL**-053-334-408-US. The Office has no record that a package bearing either of these Express Mail Nos was received. Furthermore, petitioner has provided no evidence (e.g., a copy of Express Mail No. **EL**-053-334-408-US showing a date-in of 14 February, 2001) that a package bearing Express Mail No. **EL**-053-334-408-US was ever received by the United States Postal Service (USPS). Petitioners allege that the postcard receipt was never returned to petitioners. The Office has no record that the application papers were received on 14 February, 2001.

The application is entitled to a filing date of October 29, 2001, which is the date-in of the Express mail package (Express Mail No. **EL**-053-335-261-US) containing the petition and the complete application papers.

For future reference, applicants are reminded that 37 CFR 1.10 was amended on 2 December, 1996. 37 CFR 1.10(b) now reads, in

part, as follows:

Correspondence should be deposited directly with an employee of the USPS to ensure that the person depositing the correspondence receives a legible copy of the "Express Mail" mailing label with the "date-in" clearly marked. Persons dealing indirectly with the employees of the USPS (such as by deposit in an "Express Mail" drop box) do so at the risk of not receiving a copy of the "Express Mail" mailing label with the desired "date-in" clearly marked.

Accordingly, in the future, applicants would be wise to avoid the use of Express Mail drop or collection boxes when the filing date of the correspondence being mailed is critical.

The application will be reprocessed with a filing date of 29 October, 2001, using the duplicate copy, received 1 April, 2002, of the application papers originally filed with the petition on 29 October, 2001.

The application is being forwarded to the Office of Initial Patent Examination (OIPE) for reprocessing with a filing date of 29 October, 2001.

Telephone inquiries specific to this matter should be directed to the undersigned at (703) 308-6918.



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